In the Supreme Court of the United States

OCTOBER TERM, 1941.

THE CITY OF INDIANAPOLIS, *et al.*, *Petitioners*, v. THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE, etc., *et al.*, *Respondents.*	**Nos. 10 and 11.**
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE, etc., *Cross-Petitioner*, v. CITIZENS GAS COMPANY OF INDIANAPOLIS, *et al.*, *Respondents.*	**Nos. 12 and 13.**

ANSWER TO PETITION OF CITY OF INDIANAPOLIS, ET AL., RE LIMITATION OF OPENING STATEMENT AND ARGUMENT OF CHASE NATIONAL BANK.

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The City's petition asks that the Court limit the Chase National Bank in the presentation of its opening statement and argument to the facts and arguments in respect to the limited questions raised by its cross writs of certiorari.

We are entirely willing to accommodate ourselves to any arrangement which the Court considers proper or most helpful to it in the presentation of these cases. We call attention, however, to certain considerations indicating the inappropriateness of the request made by the City.

Rule 28 of this Court, in so far as material, reads as follows:

> "1. The appellant or petitioner shall be entitled to open and conclude the argument. But when there are cross-appeals or cross-writs of certiorari they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.
>
> "* * *
>
> "4. * * * The time allowed may be apportioned between counsel on the same side, at their discretion; but a fair opening of the case shall be made by the party having the opening and closing."

The first paragraph of Rule 28 is a provision which has customarily been adopted by appellate courts. Similar provisions have been adopted by each of the Circuit Courts of Appeals, including that for the District of Columbia, and are common in the courts of last resort of the several states. So far as we can discover there has never been any judicial interpretation or application of this provision in any reported decision. The purpose of the rule, however, is clear. Since both the plaintiff and defendant in the court below are objecting to the judgment under review, the plaintiff below is allowed the opening and closing arguments, just as he was in the lower court.

Since paragraph 4 of Rule 28 expressly provides that "a fair opening of the case shall be made by the party having the opening and closing," it is clear that the rule contemplates that the party entitled to the opening (the plaintiff below, in the present case) should make a full statement of the facts as a part of his opening argument.

The difficulty and confusion which would necessarily result from requiring the plaintiff below to make a restricted statement of facts, limited only to the errors upon which he relies, is too apparent to require elaboration.

Such an arrangement would entail a piecemeal statement of the facts—some by plaintiff's counsel and some by defendant's—which could hardly be helpful to the Court.

We respectfully submit that counsel for plaintiff below is entitled to make a full and fair opening of the case as contemplated by the fourth paragraph of Rule 28.

Respectfully submitted,

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